

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,)	
)	
Plaintiff,)	
)	Case No. 16-cv-03885
)	
v.)	Hon. Sara L. Ellis
)	
)	
DANIEL C. USTIAN,)	
)	
Defendant.)	
)

FINAL PRETRIAL ORDER

This Final Pretrial Order contains all of the materials required pursuant to this Court’s Standing Order for “Final Pretrial Orders – Civil Jury Trials.”

I. Jurisdiction

This is an action for alleged violations of federal securities laws. The jurisdiction of this Court is invoked pursuant to Sections 20(b) and 22(a) of the Securities Act of 1933 [15 U.S.C. §§ 77t(b), 77v(a)], and Sections 21(d), 21(e) and 27 of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. §§ 78u(d)-(e), 78aa]. The parties do not dispute jurisdiction.

II. Trial Attorneys

For the Plaintiff SEC: (1) Eric M. Phillips, Jonathan S. Polish, Anne Graber Blazek, Timothy J. Stockwell, Securities and Exchange Commission, Chicago Regional Office, 175 West Jackson Blvd., Suite 1450, Chicago, IL 60604, 312-353-7390.

For the Defendant Daniel Ustian: Sean M. Berkowitz, Robin M. Hulshizer, Eric R. Swibel, and Caitlin E. Dahl, Latham & Watkins LLP, 330 N. Wabash Avenue, Suite 2800, Chicago, IL 60611, (312) 876-7700.

III. Case Statement

The Plaintiff in this case is the Securities and Exchange Commission, which is also called the SEC. The SEC is an agency of the federal government that enforces the federal securities laws. The Defendant in this case is Daniel Ustian, the former President and CEO of Navistar International Corporation (“Navistar”), a publicly-traded truck and engine manufacturer headquartered in Lisle, Illinois.

The SEC alleges that, from 2010 to 2012, Mr. Ustian and Navistar made material misstatements and engaged in deceptive conduct regarding Navistar’s ability to meet the Environmental Protection Agency’s (“EPA”) emission standards for heavy-duty diesel truck engines while delivering competitive fuel economy and performance. The SEC also claims that Mr. Ustian knew that Navistar was encountering roadblocks in receiving EPA certification for an engine at 0.20 grams of NOx per brake horsepower hour. The SEC alleges that Mr. Ustian violated the anti-fraud provisions of the federal securities laws and that Mr. Ustian aided and abetted Navistar’s violations of those provisions; that Mr. Ustian falsely certified certain of Navistar’s periodic reports; and that Mr. Ustian acted as a control person for Navistar’s violations of the reporting provisions of the federal securities laws, as well as certain of Navistar’s violations of the antifraud provisions of the federal securities laws.

Mr. Ustian denies that he did anything wrong and responds that each of the statements at issue in this case are true and not misleading, and that he did not participate in a scheme to defraud. Mr. Ustian contends that in making public statements about Navistar’s ability to meet

EPA emission standards, he relied on senior Navistar engineers who were involved in the development, design, and certification of the engines. Mr. Ustian says those engineers told him, and he believed, that the 0.2g NOx standard could be achieved with competitive fuel economy and performance features, and that each of the three different applications they submitted to the EPA met EPA certification requirements and should be certified, particularly given EPA's certification of engines utilizing a different emission control technology, known as SCR.

Witness Lists

Please see the attached schedules:

Schedule	Description
A	SEC's Witness List and Ustian's Objections Thereto
B	Ustian's Witness List and SEC's Objections Thereto
C	SEC's Deposition Designations and Ustian's Objections Thereto
D	Ustian's Deposition Designations and SEC's Objections Thereto

IV. Exhibit Lists

Please see the attached schedules:

Schedule	Description
E	SEC's Exhibit List With Ustian's Objections to SEC's Exhibits
F	Ustian's Exhibit List with SEC's Objections to Ustian's Exhibits

V. Damage Itemizations

The jury trial in this matter is limited to the question of liability. If the jury finds Ustian liable, then the Court will determine appropriate remedies. The SEC will seek the following

relief at the remedies stage:

(1) Injunctive Relief: the SEC will seek entry of an Order permanently enjoining Ustian, his agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from, directly or indirectly, violating Section 10(b) of the Exchange Act and Rules 10b-5 and 13a-14 thereunder and Section 17(a) of the Securities Act, and from acting as a control person for violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11 and 13a-13 promulgated thereunder;

(2) Disgorgement and Prejudgment Interest: the SEC will seek an Order requiring Ustian to pay disgorgement of his ill-gotten gains resulting from the illegal conduct alleged herein, in addition to prejudgment interest;

(3) Civil Monetary Penalty: the SEC will seek an Order imposing a civil monetary penalty against Ustian. The Court will determine the appropriate penalty amount; and

(4) Officer-Director Bar: the SEC will seek an Order imposing an officer-director bar against Ustian pursuant to Section 21(d)(2) of the Exchange Act.

Mr. Ustian disputes that the SEC would be entitled to any relief upon a finding of liability. Mr. Ustian disputes that the SEC has the legal authority to obtain disgorgement.

VI. Motions In Limine

The parties have previously filed motions *in limine* and *Daubert* motions and responses to those motions. *See* Docket Nos. 274-281, 291-301.

VII. Voir Dire Questions

Please see the attached proposed *voir dire*:

Schedule	Description
G	SEC's Proposed <i>Voir Dire</i> and Ustian's Objections Thereto
H	Ustian's Proposed <i>Voir Dire</i> and SEC's Objections Thereto

VIII. Proposed Jury Instructions and Verdict Form

Please see the attached proposed jury instructions and jury verdict forms:

Schedule	Description
I	Joint Proposed Jury Instructions
J	Disputed Proposed Jury Instructions and Objections Thereto
K	Jury Instructions from (1) <i>Ferrone</i> , (2) <i>Quan</i> , (3) <i>Heart Tronics</i> , (4) <i>Johnston</i> , (5) <i>Steffes</i> , (6) <i>Yang</i> , and (7) <i>Bankatlantic</i> supporting SEC's Disputed Proposed Jury Instructions and Objections
L	Jury Instructions from (1) <i>Ferrone</i> , (2) <i>Quan</i> , (3) <i>Heart Tronics</i> , (4) <i>Moshayedi</i> , (5) <i>Portfolio Advisors Alliance</i> , (6) <i>Steffes</i> , and (7) <i>Yang</i> , and (8) Rejected Jury Instructions Proposed by the SEC in <i>Ferrone</i> supporting Ustian's Disputed Proposed Jury Instructions and Objections.
M	Ustian's Proposed Verdict Form and SEC's Objections Thereto
N	SEC's Proposed Verdict Form and Ustian's Objections Thereto
O	Verdict Forms from (1) <i>Ferrone</i> , (2) <i>Yang</i> , and (3) <i>Berrittini</i> supporting SEC's Proposed Verdict Form and Objections
P	Verdict Forms from (1) <i>Conaway</i> , (2) <i>In Re Vivendi Universal</i> , (3) <i>In Re Apollo Group Inc.</i> , (4) <i>Jaffe</i> , and (5) <i>Hsu</i> supporting Ustian's Proposed Verdict Form and Objections

IT IS SO ORDERED.

Hon. Sara L. Ellis

United States District Court Judge
Dated: December __, 2019

Dated: December 17, 2019

Respectfully Submitted,

**UNITED STATES SECURITIES
AND EXCHANGE COMMISSION**

/s/ Eric M. Phillips

By: One of Its Attorneys

Eric M. Phillips
Jonathan S. Polish
Anne Graber Blazek
Timothy Stockwell
United States Securities and Exchange
Commission
175 West Jackson Boulevard, Suite 1450
Chicago, IL 60604
Telephone: (312) 353-7390

DANIEL C. USTIAN

/s/ Sean M. Berkowitz

By: One of His Attorneys

Sean M. Berkowitz
Cary R. Perlman
Robin M. Hulshizer
Latham & Watkins LLP
330 N. Wabash, Ste. 2800
Chicago, IL 60611
Telephone: (312) 777-7016

Laurence H. Levine
189 East Lake Shore Drive
16th Floor
Chicago, IL 60611
Telephone: (312) 927-0625